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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 762

AMELIA MARINITSIS (ALIAS MOLLY MARINITSIS),
Petitioner,

vs.

STATE OF WEST VIRGINIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA WITH BRIEF IN SUPPORT THEREOF.

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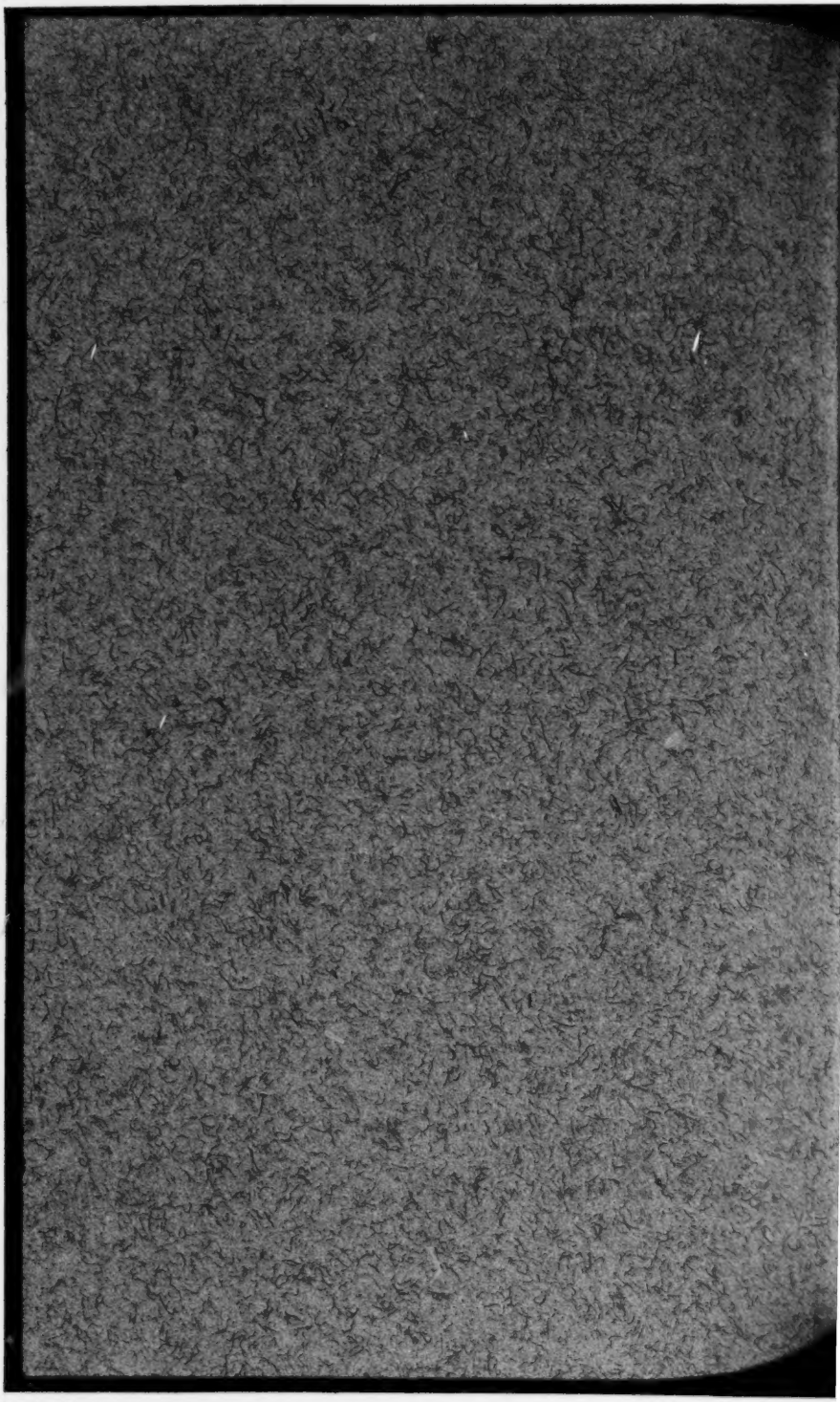

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA WITH BRIEF IN SUPPORT THEREOF.

Petitioner prays that writ of certiorari issue to review the judgment of the Supreme Court of Appeals of West Virginia. Judgment was entered November 4, 1947.

Opinion Below

The opinion of the Supreme Court of Appeals of West Virginia was announced November 4, 1947 and has not yet been reported.

Jurisdiction

The judgment of the Supreme Court of Appeals of West Virginia was entered November 4, 1947. Petition for rehearing was denied January 12, 1948. The opinion of this

Court is invoked by virtue of Title 28, Section 350, U. S. Code.

Questions Presented

1. The petitioner was denied due process of law.

2. Petitioner was denied a fair and impartial trial, and due process of law due to the fact that jurors of foreign birth were systematically excluded from the panel in Hampshire County, West Virginia, where the trial was held.

Statement of the Case

Mike Marinitsis and Chriso, his wife, parents of the petitioner, were joint owners of orchard property in Hampshire County, West Virginia, situate about 1.2 miles from the village of Augusta. For several months prior to March 12, 1945, the property had been vacant due to the fact that the foreman had been discharged. On Sunday, March 11, 1945, Mike Marinitsis and petitioner made a routine visit to the property. Shortly after arriving there they found a small fire in the downstairs. The fire was extinguished and they left the house. Soon after leaving, while a short distance away, their attention was attracted to a fire in the upstairs portion of the house and they both returned to the premises. They did everything possible to extinguish the fire and then called the nearest fire department. Both petitioner and her father were indicted for arson. At the trial petitioner's father was freed through a directed verdict. Petitioner was convicted and sentenced to the penitentiary for a period of 2 to 20 years.

Statement of Points

1. The petitioner was denied due process of law, since the indictment was returned under one statute and all of the evidence was in support of another statute relating to arson.

2. Jurors of foreign birth were systematically excluded from the panel in Hampshire County, West Virginia and petitioner's constitutional rights were violated.

Summary of Argument

1. The evidence to justify a conviction must be in support of the charge made in the indictment and evidence cannot be used in support of another statute to bring about a conviction.

2. Petitioner, being of foreign birth, was prejudiced when all jurors of foreign birth were systematically excluded from jury service in Hampshire County, Romney, West Virginia.

Reason for Granting the Writ

It is believed the questions are of such importance that they call for a review by this Court. We believe this Court should take jurisdiction in this case since the record will show that the indictment was brought under one statute in West Virginia relating to arson and all the evidence and proof tended to support another statute. A further reason for granting the writ is the action of the authorities in Hampshire County, Romney, West Virginia, in systematically excluding persons of foreign birth from jury service. This action is in violation of the Constitution and the express rulings of this Court.

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National Press Building,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

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BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the Supreme Court of Appeals of West Virginia was announced November 4, 1947 and has not yet been reported.

Jurisdiction

The judgment of the Supreme Court of Appeals of West Virginia was entered November 4, 1947. Petition for rehearing was denied January 12, 1948. The opinion of this Court is invoked by virtue of Title 28, Section 350, U. S. Code.

Statement of the Case

The statement of the case appears in the petition and is not again repeated.

Specification of Errors to Be Urged

1. Petitioner was entitled to due process of law.

2. It was error to systematically exclude jurors of foreign birth from jury service in Hampshire County, Romney, West Virginia.

ARGUMENT

In this case the indictment for arson charged the petitioner with the following:

> "• • • that Amelia Marinitsis, alias Molly Marinitsis, • • • did wilfully, maliciously, unlawfully and feloniously set fire to, burn and cause to be burned, the frame dwelling house of Mike and Chriso Marinitsis on their orchard propery situated about one mile south of Augusta, in said county, then and there being, • • •" (Section 5951, (1), West Virginia Code, 1943).

All of the evidence in the case tended to support the following:

> "• • • that Amelia Marinitsis, alias Molly Marinitsis, • • • did • • • set fire to and burn a certain dwelling house • • • which said building and furniture, at the time of said fire, were insured against loss and damage by fire, with intent wilfully and feloniously to injure and defraud the insurers thereof • • •." (Section 5951 (5), West Virginia Code, 1943).

In *Blauweis* v. *Kirschner*, 219 N. Y. Supplement 662, Sec. 521 "Statutes," we find this:

> "It is a familiar and well-settled rule that a subsequent statute, revising the whole subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former to the extent to which its provisions are revised and supplied."

See *State* v. *Michaels*, 103 W. Va. 634; 138 S. E. 199.

See *State* v. *Harden*, 62 W. Va. 313; 58 S. E. 715; 60 S. E. 394.

It is well settled as between conflicting statutes, the last one enacted is controlling.

See *In Re Frederick's Estate*, 19 N. W. (2d) 248; 247 Wis. 268.

See *Sale* v. *Board of Education*, 119 W. Va. 193, 192 S. E. 173.

It should be pointed out that in 1935 the Legislature of West Virginia codified and enacted new provisions in regard to this crime, which are our present law. One of these is the general act 5951 (1), and provides generally for the malicious setting fire to or burning of any dwelling house, etc., whether occupied or not, and whether owned by the guilty party or not. The Legislature intended that under this section the act itself provides sufficient criminal intent and motive.

In addition thereto, it enacted Section 5951 (5), which provides for the specific offense of wilfully setting fire to or burning of any building, etc., with intent to injure or defraud the insurer of the said property.

We believe the following from *Withers* v. *Commonwealth*, 65 S. E. 16, 109 Va. 837 has application here:

> "Criminal statutes are construed strictly against the State and in favor of the citizen. No man incurs a penalty unless the act which subjects him to it is clearly within the spirit of the letter and statute which imposes such penalty. There are no such things as constructive crimes."

A careful reading of the record will also show that the State relied wholly upon circumstantial evidence and the petitioner has at all times steadfastly maintained her innocence.

The systematic exclusion of jurors. In the petition for rehearing filed in the Supreme Court of Appeals of West Virginia we find the following:

> "Appellant is of the belief that this presents a serious constitutional question in that the jury was not properly impaneled in that the names of the jurors, when placed in the jury box, were not upon separate paper or ballots and folded and rolled 'so that the name written thereon shall not be visible on the outside,' but that they were so prepared that the Commissioner at the time of drawing the panel, and the Clerk at the time of drawing the jury to hear the case could easily see the name of the juror he was about to draw. Appellant says that counsel for appellant was under the impression that the jury had been properly drawn and it was only recently discovered that it was not properly drawn. The affidavit sets forth that the irregularity of the impaneling of juries, by direction of the trial judge, has been ordered corrected since the trial of this case.
>
> A more serious and important Federal and constitutional question arises when reference is made to the affidavit which sets forth that the jury did not represent a proper cross-section of the community in that persons of foreign birth and negroes were not called for jury service." See Thiel *v.* Southern Pacific Co., 328 U. S. 217; also Smith *v.* Texas, 311 U. S. 128.

Conclusion

The questions involved here are important and serious. Petitioner is a young woman 22 years of age, and is faced with a sentence of 2-20 years in the penitentiary. We believe the record shows the unfairness of the first trial and the necessity for a new one. We say therefore that the petition for certiorari should be granted.

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